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2 ANTICANCER, INC.
3 7917 Ostrow Street
4 San Diego, CA 92111
5 (858) 654-2555 (Telephone)
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8 Attorney for Plaintiff AntiCancer, Inc.

9 UNITED STATES DISTRICT COURT
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

11 ANTICANCER, INC., a California
12 corporation,

13 Plaintiff,

14 v.

15 PFIZER, INC., a Delaware corporation;
16 and DOES 1-10,

17 Defendants.

Case No. '11CV0107 JLS RBB

COMPLAINT FOR:

BREACH OF LICENSE AGREEMENT;
BREACH OF IMPLIED COVENANT OF
GOOD FAITH AND FAIR DEALING;
UNJUST ENRICHMENT

DEMAND FOR JURY TRIAL

1
2
3 AntiCancer, Inc., by and through its counsel, alleges for its Complaint against Pfizer,
4 Inc. and Does 1-10, inclusive as follows:

5 JURISDICTION AND VENUE

6 1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1)
7 since the matter in controversy exceeds, exclusive of interest and costs, the sum of \$75,000.00
8 and is between citizens of different states.

9 2. Venue is proper in this judicial district under pertinent law, including, *inter alia*,
10 28 U.S.C. § 1391.

11 THE PARTIES

12 3. Plaintiff AntiCancer, Inc. ("AntiCancer") is a corporation organized and
13 existing under the laws of the State of California and having as its principal place of business
14 San Diego, California. AntiCancer has developed patented imaging techniques used by
15 cancer researchers to test new anti-cancer drugs. AntiCancer licenses this (and other)
16 technology to both large and small research organizations, including several major
17 pharmaceutical companies.

18 4. Defendant Pfizer, Inc. ("Pfizer") is a corporation organized and existing under
19 the laws of the State of Delaware and having as its principal place of business New York City,
20 New York. In or around 2009, Pfizer wholly acquired Wyeth Pharmaceuticals ("Wyeth"),
21 including Wyeth's Pharmaceuticals Division.

22 5. The true names and capacities, whether individual, corporate, associate,
23 representative or otherwise, of DOES 1 through 10, inclusive, are unknown to plaintiff, who
24 therefore sues them by such fictitious names. Plaintiff will seek leave to amend this
25 complaint to show the true names and capacities of said defendants when they are ascertained.
26 Plaintiff is informed and believes, and thereupon alleges, that each of the defendants named as
27 a Doe, along with the named defendants, is responsible in some manner for the occurrences
28 herein alleged, and that plaintiff's injuries herein alleged were legally or proximately caused

1 by said defendants. Wherever it is alleged that any act or omission was also done or
2 committed by any specifically named defendant, or by defendants generally, plaintiff intends
3 thereby to allege, and does allege, that the same act or omission was also done and committed
4 by each and every defendant named as a Doe, and each named defendant, both separately and
5 in concert or conspiracy with the named defendants.

6 6. At all times mentioned herein, defendants, and each of them, were the agents,
7 servants, co-conspirators, or employees of one another, and the acts and omissions herein
8 alleged were done or suffered by them, acting individually and through or by their alleged
9 capacity, within the scope of their authority. Each of the defendants aided and abetted and
10 rendered substantial assistance in the accomplishment of the acts complained of herein. In
11 taking the actions, as particularized herein, to aid and abet and substantially assist in the
12 commission of the misconduct complained of, each defendant acted with an awareness of his,
13 her or its primary wrongdoing and realized that his, her or its conduct would substantially
14 assist in the accomplishment of that misconduct and was aware of his, her or its overall
15 contribution to, and furtherance of the conspiracy, common enterprise, and common course of
16 conduct. Defendants' acts of aiding and abetting included, *inter alia*, all of the acts each
17 defendant is alleged to have committed in furtherance of the conspiracy, common enterprise,
18 and common course of conduct complained of herein.

19 FACTS

20 7. On December 22, 2006, AntiCancer and Wyeth Pharmaceuticals entered into a
21 technology licensing agreement ("License Agreement"). Certain portions of the License
22 Agreement may contain confidential information. AntiCancer will seek leave of the Court to
23 enter the License Agreement into the record under seal.

24 8. The License Agreement required AntiCancer to provide a limited, non-exclusive
25 license to certain of its patented technologies, in exchange for Wyeth paying an initial fee of
26 \$250,000 and annual maintenance fees of \$150,000 each. The annual maintenance fees are
27 due on the December 22 anniversary of the License Agreement, and payable within fifteen
28

1 (15) days of that date, i.e., January 6. Wyeth paid the initial fee, and for the next two years
2 paid the required yearly maintenance fees.

3 9. The License Agreement also required AntiCancer to supply Wyeth with certain
4 of its technical information ("Know-How"), cancer cell lines ("Cell Lines"), and mouse
5 models ("Animal Models"). AntiCancer performed all of its requirements under the License
6 Agreement.

7 10. In or around 2009 Wyeth was acquired as a wholly-owned subsidiary of Pfizer.
8 In December 2009, Pfizer affirmed its obligation to perform all of Wyeth's obligations under
9 the License Agreement by paying the third annual maintenance fee.

10 11. On December 8, 2010, Beth E. Rosado, a Pfizer Operations Associate, sent an
11 email to AntiCancer in which she stated "I am in the process of drafting a termination letter
12 for a license agreement between Wyeth (now Pfizer, Inc.) and AntiCancer, Inc. dated
13 December 22, 2006." (The December 8 email is attached hereto and incorporated herein as
14 Exhibit 1).

15 12. On December 15, 2010, Ms. Rosado again emailed AntiCancer, this time
16 attaching what she described as a "termination letter." (The December 15 email and its
17 attached letter are attached hereto and incorporated herein as Exhibit 2).

18 13. The "termination letter" attached to Ms. Rosado's December 15 email was
19 signed by Robert T. Abraham, Ph.D., Vice President and Chief Scientific Officer of Pfizer's
20 Center for Integrative Biology and Biotherapeutics. Dr. Abraham's letter purported to be
21 dated December 8, 2010. In it, Dr. Abraham stated that "Pursuant to Section 9.2 of the
22 [December 22, 2006] Agreement, Pfizer hereby gives notice of termination of the Agreement.
23 The Agreement shall therefore terminate on December 8, 2010." (Page 2 of Exhibit 2).

24 14. Section 9.2 of the License Agreement permits the Licensee to terminate the
25 agreement "upon thirty (30) days prior written notice to Licensor." Pfizer's notice, whether
26 deemed to be made on December 15 (the date it was received by AntiCancer) or December 8
27 (the date Pfizer purports the License Agreement to terminate), was given too late to relieve
28 Pfizer of its obligation to pay the annual maintenance fee.

1 15. On information and belief, Pfizer knowingly and fraudulently backdated its
2 termination letter in an attempt to induce AntiCancer to believe Pfizer had actually complied
3 with the termination notice requirements. Pfizer did this for the sole purpose of unfairly
4 withholding from AntiCancer the 2010 maintenance fee AntiCancer is entitled to under the
5 License Agreement.

6 16. Despite demands by AntiCancer, Pfizer has failed to pay the annual
7 maintenance fee that was due no later than January 6, 2011.

8 17. Section 9.5 of the License Agreement provides that upon termination by the
9 Licensee under Section 9.2, "all rights and licenses granted to Licensee hereunder shall
10 immediately terminate and all rights to the Licensed Technology shall revert to Licensor."
11 Under the License Agreement "Licensed Technology" includes the rights, *inter alia*, to the
12 Know-How, Cell Lines, and Animal Models provided by AntiCancer.

13 18. Pfizer has not returned to AntiCancer any of the Know-How, Cell Lines, or
14 Animal Models, as required upon termination of the License Agreement.

15 FIRST CLAIM FOR RELIEF

16 (Breach of Contract – License Agreement)

17 19. AntiCancer realleges and incorporates by reference as though fully set forth
18 preceding paragraphs 1 through 18.

19 20. There exists a valid technology licensing agreement between AntiCancer and
20 Pfizer, dated and effective December 22, 2006 (the "License Agreement").

21 21. AntiCancer has performed all conditions, covenants, and promises required by it
22 on its part to be performed in accordance with the terms and conditions of the License
23 Agreement.

24 22. Pfizer has breached the License Agreement by failing to pay the annual
25 maintenance fee of \$150,000 due no later than January 6, 2011.

26 23. As a direct and proximate result of Pfizer's failure to pay the maintenance fee as
27 required under the License Agreement, AntiCancer has been damaged in the amount of at
28 least \$150,000.

SECOND CLAIM FOR RELIEF

(Breach of Implied Covenant of Good Faith and Fair Dealing)

24. AntiCancer realleges and incorporates by reference as though fully set forth preceding paragraphs 1 through 23.

25. Implied in the License Agreement is a covenant of good faith and fair dealing.

26. Pfizer has breached the implied covenant of good faith and fair dealing by attempting to avoid the notice requirements of the termination rights contained in the License Agreement through a bad faith and fraudulent backdating of its purported termination notice.

27. Pfizer's breach of the implied covenant of good faith and fair dealing was intentional and made with the specific purpose of unfairly and improperly withholding the benefits due to AntiCancer under the License Agreement.

28. As a direct and proximate result of Pfizer's breach of the covenant of good faith and fair dealing, AntiCancer has been damaged in an amount to be proven at trial, in addition to attorneys fees and expenses.

THIRD CLAIM FOR RELIEF

(Unjust Enrichment)

29. AntiCancer realleges and incorporates by reference as though fully set forth preceding paragraphs 1 through 28.

30. Pfizer has obtained valuable intellectual and physical property from AntiCancer, including but not limited to, Know-How, Cell Lines, and Animal Models (the "Licensed Technology").

31. Pfizer has obtained the Licensed Technology at AntiCancer's expense and efforts, and as a result of AntiCancer's good faith performance under the License Agreement.

32. Upon Pfizer's termination of the License Agreement, any and all of Pfizer's rights to the Licensed Technology terminated and all rights to the Licensed Technology reverted back to AntiCancer.

33. Pfizer has not returned any of the Licensed Technology or made monetary restitution of its value. Pfizer's unjustified and continuing detention of the Licensed

1 Technology constitutes unjust enrichment, and the circumstances are such that in equity and
2 good conscience Pfizer should return the Licensed Technology or make monetary restitution
3 of its value, in an amount to be proven at trial.

4 PRAYER FOR RELIEF

5 WHEREFORE, Plaintiff AntiCancer prays for relief as follows:

6 (1) That the Court order Pfizer to pay AntiCancer's direct damages in the amount of
7 \$150,000 and indirect damages according to proof at trial;

8 (2) That the Court award AntiCancer its attorneys fees incurred by it in prosecuting
9 this action;

10 (3) That the Court assess pre-judgment and post-judgment interest and costs of suit
11 against Pfizer, and award such interest and costs to AntiCancer;

12 (4) That the Court order Pfizer to return all wrongfully detained property of
13 AntiCancer or award monetary restitution of the value thereof; and

14 (4) That AntiCancer have such other and further relief as this Court may deem just
15 and proper.

16
17 Respectfully submitted,

18
19 Dated: January 19, 2011

ANTICANCER, INC.

20
21
22 By: s/Matt Valenti
23 Matt Valenti
24 Attorney for Plaintiff ANTICANCER, INC.
25
26
27
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DEMAND FOR TRIAL BY JURY

AntiCancer hereby demands a trial by jury as to all issues triable by jury.

Respectfully submitted,

Dated: January 19, 2011

ANTICANCER, INC.

By: s/Matt Valenti
Matt Valenti
Attorney for Plaintiff ANTICANCER, INC.

EXHIBIT 1

EXHIBIT 1

From: Rosado, Beth [mailto:Beth.Rosado@pfizer.com]
Sent: Wednesday, December 08, 2010 10:41 AM
To: all@anticancer.com
Subject: Termination letter

I am in the process of drafting a termination letter for a license agreement between Wyeth (now Pfizer, Inc.) and AntiCancer, Inc dated December 22, 2006.

Can someone please verify whether there is someone in addition to Dr. Hoffman who should receive the letter?

Thank you
Beth

Beth E. Rosado
CIBB
BioTherapeutics R&D
Pfizer, Inc.
401 N. Middletown Rd., 200/4502
Pearl River, NY 10965
P: (845) 602-4568
F: (845) 474-3264
beth.rosado@pfizer.com

 please don't print this e-mail unless necessary

EXHIBIT 2

EXHIBIT 2

From: "Rosado, Beth" <Beth.Rosado@pfizer.com>
To: "AntiCancer, Inc." <team.acct@yahoo.com>
Sent: Wed, December 15, 2010 8:56:46 AM
Subject: RE:

Please see the attached termination letter for the License agreement with AntiCancer. A copy is being sent on to Dr. Robert Hoffman.

Thank you,
Beth



please don't print this e-mail unless necessary

From: AntiCancer, Inc. [mailto:team.acct@yahoo.com]
Sent: Thursday, December 09, 2010 1:26 PM
To: Widbin, Karen
Cc: Rosado, Beth
Subject:

Dear Customer :

Please find attached the invoice for the annual renewal of our license agreement. We would appreciate payment by 12/22/2010.

Thanks very much,

AntiCancer, Inc.
858-654-2555

To view your invoice

Open the attached PDF file. You must have Acrobat® Reader® installed to view the attachment.

Beth E. Rosado
Operations Associate
401 N. Middletown Road
Pearl River, NY 10965
845-802-4588 tel.
845-474-3264 fax
Beth.Rosado@pfizer.com



Pfizer Inc
235 East 42nd Street
New York, NY 10017

December 8, 2010

Robert M. Hoffman, Ph.D.
President
AntiCancer, Inc.
7917 Ostrow Street
San Diego, CA 92110

Re: Termination of License Agreement between Pfizer Inc and AntiCancer dated
December 22, 2006 (the Agreement")

Dear Dr. Hoffman:

It has been determined that the license granted to Pfizer under the Agreement is no longer needed. Pursuant to Section 9.2 of the Agreement, Pfizer hereby gives notice of termination of the Agreement. The Agreement shall therefore terminate on December 8, 2010. If there are any questions or concerns, please contact Beth Rosado.

Regards,

A handwritten signature in black ink, appearing to read "Robert T. Abraham".

Robert T. Abraham, Ph.D.
VP and CSO, Center for Integrative Biology and Biotherapeutics
Pfizer Inc

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ANTICANCER, INC.

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Matt Valenti, AntiCancer, Inc., 7917 Ostrow Street, San Diego CA 92111

DEFENDANTS

PFIZER, INC.

County of Residence of First Listed Defendant New York
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

'11CV0107 JLS RBB**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act (Excl. Veterans) <input type="checkbox"/> 152 Recovery of Defaulted Student Loans <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY/RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. Section 1332(a)(1)

Brief description of cause:

Breach of Technology License Agreement; Breach of Covenant of Good Faith/Fair Dealing; Unjust Enrichment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

at least \$150,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

01/19/2010

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____